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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/717,768	11/20/2003	Jay C. Landsiedel	US20030359	8877
173	7590	01/17/2006	EXAMINER	
WHIRLPOOL PATENTS COMPANY - MD 0750 500 RENAISSANCE DRIVE - SUITE 102 ST. JOSEPH, MI 49085			STINSON, FRANKIE L	
		ART UNIT		PAPER NUMBER
				1746

DATE MAILED: 01/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

(initials)

Office Action Summary	Application No.	Applicant(s)	
	10/717,768	LANDSIEDEL ET AL.	
	Examiner	Art Unit	
	FRANKIE L. STINSON	1746	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 23 November 2005.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 2-20 and 22-42 is/are pending in the application.
- 4a) Of the above claim(s) 9-12 and 28-31 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 2-8, 13-20, 22-27 and 32-42 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.

- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

Art Unit: 1746

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 2-8, 13, 20, 22-27, 32, and 39-42 rejected under 35 U.S.C. 103(a) as being unpatentable over either Cress (U. S. Pat. No. 2,501,887) or Horwitz (U. S. Pat. No. 2,320,133) in view of Bargar (U. S. Pat. 1,997,849).

Re claims 40 and 42, Cress and Horwitz (see fig. 6) are each cited disclosing a dishwasher for washing dishes, comprising: a tub comprising a peripheral wall defining an (top) open-faced wash chamber; a door/cover for selectively closing the open-face of the wash chamber, a basket positionable within the wash chamber and comprising a bottom wall, a peripheral wall extending upwardly from the bottom wall to define an open-top utensil holding space, and multiple tines located in the utensil holding space for holding utensils placed in the basket for washing; a water spray assembly located within the wash chamber such that the water spray assembly sprays liquid into the utensil holding space through the bottom wall of the basket; at least one side sprayer located in the wash chamber such that the side sprayer sprays liquid laterally into the utensil holding space that differs from the claims only in the recitation of the adjustable utensil carrier located within the utensil holding space and adjustable relative to the bottom of the basket to form an inclination angle relative to the bottom wall of the basket, such that a utensil, supported by the adjustable utensil carrier, can be positioned such that a food contact surface of the utensil, is exposed to direct spray

from both the water spray assembly and the at least one side sprayer. The patent to Bargar is cited disclosing an adjustable utensil carrier (60, see figs. 6 and 18-20) that is located within the utensil holding space and adjustable relative to the bottom of the basket to form an inclination angle relative to the bottom wall of the basket. It therefore would have been obvious to one having ordinary skill in the art provide either Cress or Horwitz, to include an utensil carrier as taught by Bargar, for the purpose of holding small dishes or articles near the outlet of the water spray assemblies. Re claims 4, 22 and 24, to have the inclination angle 35 degrees is of no patentable significance with respect to the angle as shown in Bargar. Re claim 3 and 23, Cress and Bargar disclose the basket as removable between a stored and load position. Re claim 5, Bargar disclose the generally perpendicular stored position (see fig 18). Re claims 6, 7, 25 and 26, Bargar discloses the rack pivoted/hinge to a peripheral wall as claimed. Re claims 8 and 27, Bargar discloses the rack as a wire frame. Re claims 13 and 28, no patentable distinction is deemed to exist between the actuator as claimed and the (inherent) actuator as in Bargar. The actuators are deemed to be the functional equivalence of each other. Re claims 20 and 29, to have the support space intended to support a "cooking" utensil is deemed to be a statement of intended use. The utensil carrier in Cress and Horwitz, as proposedly modified, obviously can support any type utensil placed therein.

3. Applicant's arguments filed Nov. 23, 2005 have been fully considered but they are not persuasive. In regard or the remarks on the applied references, namely the combination as suggested by the examiner in improper due to hindsight, please note that in the art it is old and well known to position the utensil in the basket and have the

same adjusted for proper contact with the wash water, Bargar discloses that is old and well known to provide a basket movable basket for aligning the utensil with the flow of wash water. Thusly, given the teaching of Bargar, it is the examiner's position that one skilled in the art would readily align the utensil, with the wash water flow.

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. In WIPO'375, note the basket means.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to FRANKIE L. STINSON whose telephone number is (571) 272-1308. The examiner can normally be reached on M-F from 5:30 am to 2:00 pm and some Saturdays from approximately 5:30 am to 11:30 am.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Barr, can be reached on (571) 272-1700. The fax phone number for the organization where this application or proceeding is assigned is 571-272-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

Should you have questions on access to the Private PAIR system, contact the
Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FIs



FRANKIE L. STINSON
Primary Examiner
GROUP ART UNIT 1746